



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,502	11/30/2001	Eric P. Plourde	769-303	6555

29540 7590 11/12/2003

PITNEY, HARDIN, KIPP & SZUCH LLP
685 THIRD AVENUE
NEW YORK, NY 10017-4024

EXAMINER

JACKSON, ANDRE L

ART UNIT	PAPER NUMBER
----------	--------------

3677

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,502

Applicant(s)

PLOURDE ET AL.

Examiner

Andre' L. Jackson

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 6, 2003 has been entered.

Claim Rejections - 35 USC § 112

Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In amended claim 1, lines 16-18, the limitation "whereby said two of said ribs shaped with a distal end with one and only one barb flex outwardly in said interlocking relationship, thereby widening all of said first plurality of continuous grooves" is considered the new matter. The above limitation has no written support within applicant's original specification as filed. Further, the Examiner believes that the aforementioned new matter in applicant's claim(s) is not patentably distinct from many conventional prior art (analogous) closure devices because it is well known that closure profiles tend to be flexible, allowing an inter-locking relationship with one or more engaging elements of the profiles.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,217,215 to Tomic. Tomic (Fig. 7) discloses a closure mechanism (570) comprising a first inter-lockable profile (571) having a longitudinally extending web portion and having a longitudinally extending locking portion, the locking portion of the first profile having a plurality of continuous shaped ribs (574, 575, 576) extending there-along, the ribs having a central tip and barbs extending laterally at each side of the tip with the barbs providing a first interlocking contact area. A second inter-lockable profile (572) having a longitudinally extending web portion and having a longitudinally extending locking portion, the locking portion of the second profile having a plurality of continuous shaped ribs (578, 579) extending there-along with at least one of the ribs having a central tip and a pair of barbs extending laterally at each side of the tip and the ribs with a central tip of the second profile bordered by at least two of the ribs (577, 580) shaped with a distal end with one and only one barb extending laterally from the distal end and extending laterally to at least one of the ribs having a central tip with the barbs providing a second inter-locking contact area. A first plurality of continuous grooves (U-shaped or bowl-shaped recess areas) there-between the ribs of the second profile, the first plurality of continuous grooves receptive in at least one inter-locking relationship to the locking portion of the first profile, whereby the two ribs shaped with a distal end with one by flex outwardly during interlocking, thereby widening the plurality of continuous grooves.

Art Unit: 3677

However, Tomic fails to disclose that the second inter-lockable profile has one and only one of the ribs having a central tip and a pair of barbs extending laterally at each side of the tip. Instead, Tomic includes two such ribs (578, 579). However, in column 8, lines 16-19, Tomic disclose that the first and second inter-lockable profiles can be constructed to have any number of ribs. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the closure mechanism of Tomic to reduce the number of ribs from two to one for the purpose of reducing material and thus overall cost of manufacture. Furthermore, applicant has not stated that the choice of just one rib solves any relevant problem or is for a particular purpose and the closure mechanism of Tomic operates equally as well.

Response to Applicant's Arguments

Applicant's arguments filed in Amendment B on June 30, 2003 have been considered but are found not to be persuasive. In response to applicant's argument on page 4 of the above amendment that applicant's invention is patentably distinct over Tomic by the amendment to claim 1, to recite "whereby said two of said ribs shaped with a distal end with one and only one barb flex outwardly in said interlocking relationship, thereby widening all of said first plurality of continuous grooves" is considered new matter.

However, even if the new matter in applicant's amended claim(s) was supported by applicant's specification, the Examiner infers that the interlocking operation of Tomic's closure mechanism inherently performs this function (described by the new matter) when the first and second profiles are either pressed or pulled apart. See column 7, lines 36-47.

Art Unit: 3677

As to applicant's arguments on page 3, Tomic discloses a similar arrangement to applicant's invention except Tomic constructs his closure mechanism with two ribs having a pair of barbs extending laterally from a central tip thereof and the two ribs are bordered by two additional ribs having just one barb extending from a distal end thereof. Here, the Examiner believes that the additional structure of Tomic does not germane to patentability of applicant's invention. In fact, in applicant's specification, page 3, lines 7-24, applicant states that the male and female interlocking profiles can have any number of ribs, which can be modified into various shapes. Therefore, Tomic's closure mechanism, although it has more structure (more than one barb) than recited in applicant's claims, can be of obviousness modification to meet the limitations and the scope of applicant's invention.


Accordingly, claims 1-4 remain rejected over Tomic.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276. The examiner can normally be reached on Mon. - Fri. (10 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (703) 308-3179. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1018.



Anthony Knight
Supervisory Patent Examiner
Group 3600

André L. Jackson

Application/Control Number: 09/998,502

Page 6

Art Unit: 3677

Patent Examiner
AU 3677

ALJ